



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE CAROL OWENS, CHAIR, ASSEMBLY COMMITTEE ON
CHILDREN AND FAMILY LAW

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 2007 Assembly Bill 9, Relating to Requirements for Ordering Maintenance

DATE: March 23, 2007

This memorandum describes the provisions of 2007 Assembly Bill 9, relating to requirements for ordering maintenance. Representative Schneider introduced the bill on January 12, 2007. The Assembly Committee on Children and Family Law held a public hearing on the bill on March 8, 2007.

CURRENT LAW

Maintenance Orders

Under current law, upon a judgment of annulment, divorce, or legal separation, the court may order one party to pay maintenance (formerly known as alimony) to the other party for a limited or indefinite time. In determining whether to order maintenance, current statutes require the court to consider the following:

- The length of the marriage.
- The age and physical and emotional health of the parties.
- The division of the parties' marital property.
- The educational level of each party at the time of marriage and at the time the action is commenced.
- The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to

acquire sufficient education or training to enable the party to find appropriate employment.

- The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- The tax consequences to each party.
- Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for financial support of the parties.
- The contribution by one party to the education, training, or increased earning power of the other.
- Such other factors as the court may in each individual case determine to be relevant.

[s. 767.56, Stats.]

It should also be noted that the Wisconsin Supreme Court has held that the general objectives of maintenance are as follows:

- To support the recipient spouse in accordance with the parties' needs and earning capacities.
- To ensure a fair and equitable financial arrangement between the parties in each individual case.

[*Rohde-Giovanni v. Baumgart*, 269 Wis. 598, 617-618 676 N.W.2d 452 (2004).]

Revising or Vacating Maintenance Orders

Under current law, on the petition, motion, or order to show cause of either party, the court may revise or alter a maintenance order as to the amount and payment of maintenance. In an action to revise maintenance payments, a substantial change in the cost of living for either party or as measured by the Federal Bureau of Labor Statistics may be sufficient to support a revision of the amount of maintenance, except that a change in an obligor's cost of living is not by itself sufficient if payments are expressed as a percentage of income. [s. 767.59 (1c) and (1k), Stats.]

The statutes do not directly set forth the criteria for revising maintenance payments. Under current case law, in general, a party seeking a modification must show that there has been a substantial change in financial circumstances warranting modification, giving consideration to the objectives, describe above. [*Rohde-Giovanni* at 618-619.]

Current law also provides that, after a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court must vacate the order requiring the payments. [s. 767.59 (3), Stats.]

Under current case law, cohabiting with a member of the opposite sex does not require a modification of maintenance. A party requesting a modification on this ground must show a change in the maintenance recipient's financial needs or that the living arrangement was fashioned for purposes of avoiding modification of maintenance. [*Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 327 N.W.2d 674 (1983).]

ASSEMBLY BILL 9

Maintenance Orders

Under Assembly Bill 9, a court may order maintenance as a rehabilitative measure to enable the party for whom maintenance is ordered to acquire the education or skills necessary to become self-supporting.

The bill specifies that the court may order maintenance to a party *only if* both of the following conditions are satisfied:

- The parties have been married for at least 15 years.
- The party seeking maintenance shows either that: (a) because of the marriage he or she lacks sufficient resources to provide for his or her minimal, reasonable needs; or (b) employment is difficult for the party to maintain, or that gainful employment is not possible for the party to obtain, because of a physical or mental disability that was incurred by the party during the marriage and that is certified by a physician.

Under the bill, in determining whether to order maintenance and the amount of maintenance to order, the court must consider all of the following that apply:

- The length of the marriage.
- The age and physical and emotional health of the parties, *both before and during the marriage*.
- The division of the parties' marital property, *and all other financial resources of the party seeking maintenance*.
- The educational level of each party at the time of marriage and at the time the action is commenced.
- The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to

acquire sufficient education or training to enable the party to find appropriate employment.

- *The contributions and sacrifices of each of the parties during the marriage, including the contribution by one party to the education, training, or increased earning power of the other.*
- *The efforts of the party seeking maintenance to obtain suitable employment before and during the pendency of the action.*
- Such other factors as the court may in each individual case determine to be relevant.

Therefore, under the bill, the following current factors are not considered in awarding maintenance:

- The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- The tax consequences to each party.
- Mutual agreement made by the parties before or during the marriage.

Notwithstanding the court's finding relating to the above factors, under the bill, the court *may deny* maintenance to a party if either of the following applies:

- The party seeking maintenance engaged in extramarital activities during the marriage.
- The party seeking maintenance has not made reasonable efforts to obtain employment or develop the skills necessary to become self-supporting.

The bill provides that, if the court orders maintenance, it must require payment for the shortest time necessary for the payee to become employed at a level that provides for the payee's minimal, reasonable needs, but in no case for longer than three years. There are two exceptions:

- If the payee, during the marriage, contributed to the education of the payer, the court may order maintenance to continue until the total amount of maintenance equals the amount the payee contributed.
- If the payee becomes disabled during the marriage, the court may order maintenance to continue for whichever is shorter: (a) as long as the disability continues, but in no case after the payee reaches the age that, for a retired worker who was born on the same date as the payee, is full retirement age for the purpose of receiving unreduced Social Security benefits; or (b) until the payee receives or becomes eligible to receive disability payments or other benefits paid on account of his or her disability.

The bill also provides that if the court orders maintenance it must set the amount at a level that does not exceed a monthly amount necessary to meet the minimal, reasonable needs of the payee, but in

no case may the court set the amount at more than 20% of the payer's monthly income, based on a 40-hour work week or the payer's base pay.

Revising or Vacating Maintenance Orders

Under the bill, after a final judgment requiring maintenance payments has been rendered, if the payee remarries *or cohabits* with another adult person of the opposite sex, the court must vacate the order requiring the payments.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm

